

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRY LEWIS HAYES

Claimant

VS.

WILLIAMS FOODS, INC.

Respondent

AND

ST. PAUL GUARDIAN INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,018,602

ORDER

Respondent appeals the March 24, 2005 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was granted benefits after the Administrative Law Judge (ALJ), by implication, determined that claimant proved that he suffered accidental injury arising out of and in the course of his employment, although that specific finding is not contained in the Preliminary Decision.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges accidental injury on April 15, 2004, while working for respondent. Claimant's consistent description of the injury, which was presented to medical examiners as early as April 21, 2004, when he went to Concentra Medical Center, was that he was working on a bag line, doing repetitive lifting, when he felt a slight pain in his lower back while walking into the warehouse. X-rays performed on April 21, 2004, at Concentra Medical Center indicate a disc space narrowing at L4-5 and L5-S1, with mild end plate spurring. Respondent contends that an examination performed on April 8, 2004, defeats claimant's claim, as respondent argues claimant had clear, preexisting low back problems. However, the x-rays performed at Providence Medical Center on April 8, 2004, indicate sacralization at L5 bilaterally, but the alignment was found to be normal and disc spaces

were preserved. This shows a clear modification in claimant's condition from April 8, 2004, leading up to the examination on April 21, 2004.

Respondent further contends that Vinaya K. Koduri, M.D., who examined claimant on April 8, 2004, uncovered low back complaints seven days prior to the alleged date of injury. However, Dr. Koduri's examination appears to focus primarily on claimant's cervical spine, which is the site of an earlier workers compensation injury from April 2002. Claimant was diagnosed with disc space narrowing at C4-5, C5-6 and C6-7, with hypertrophic changes noted at those levels. There was mild narrowing of the neuroforamen, with moderate degenerative changes diagnosed at C4-5-6. Likewise, the examination on May 5, 2004, with Theodore L. Sandow, Jr., M.D., focused on claimant's cervical spine, shoulders and arms. It is clear from the beginning of Dr. Sandow's letter¹ the injury of April 2002 dealt with a completely different area of the body rather than the lumbar spine alleged by claimant to be the site of the April 15, 2004 injury.

The Board finds claimant has proven he suffered accidental injury arising out of and in the course of his employment on April 15, 2004, to his lumbar spine. The arguments presented by respondent, based upon this record, have no merit. The Board affirms the finding by the ALJ that claimant suffered accidental injury out of and in the course of his employment to his lumbar spine on April 15, 2004.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated March 24, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2005.

BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
John D. Jurcyk, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ Dr. Sandow's letter regarding the IME he performed on May 5, 2004. (P.H. Trans., Resp. Ex. B.)